

Credit Reporting, Overdraft Issues and the Remittance Rule Dominate the CFPB's 2016 Winter Supervisory Highlights

By Joann Needleman / Mar 10, 2016

The 10th edition of Consumer Financial Protection Bureau's (CFPB or Bureau) Supervisory Highlights (the Report) continues on the themes of credit reporting and overdraft protection prevalent in recent CFPB statements (see [February 3, 2016 CFPB Press Release](#) and [Compliance Bulletin 2016-01](#)). While debt collection, mortgage and student loan servicing did not escape the CFPB's critique, there is evidence in the Report that prior policy initiatives surrounding consumer checking accounts are starting to formally develop. This is also the first time that the Bureau has released its finding on its supervision activities surrounding the Remittance Rule. Like its prior Report, the Bureau once again shares positive practices among entities which are a helpful guide in understanding compliance requirements. Unfortunately, the positive findings did not make their way into any CFPB press release. The findings in the Report reflect supervisory activities from September 2015 through December 2015.

Highlighted Deficiencies

Consumer Reporting & Overdraft: Much like the Supervisory Highlights from the fall, the CFPB warns that those financial institutions that furnish credit information to credit reporting agencies (CRA) establish and implement reasonable written policies and procedures regarding the accuracy and integrity of information being furnished. Since the last report, the CFPB still sees this to be a significant problem. In this Report, the CFPB's focus was on those furnishers who report to nationwide specialty consumer reporting agencies (NSCRA), many of whom still lack the requisite procedures and who, in many instances, failed to properly update and correct deposit account information that was being reported. For example, when consumers paid charged-off accounts in full, one or more banks or credit unions would update their records but would not update the change in status and send that information to the NSCRA. Not updating an account to "paid in full" status could negatively affect a consumer's attempt to open a new checking account. Additionally, the CFPB found that many of these institutions have weaknesses in linking identifying information with involuntary account closures like account abuses and fraud. Finally, several investigations showed weak NSCRA oversight of credentialing furnishers.

Debt Collection: Although buried in the middle of the Report, there was a bit of positive reinforcement for the collaborative work between traditional CRAs and debt collectors. CRAs are now making available exception reports to furnishers, which identify the specific information a CRA has rejected from the furnisher's data submission. These exception reports provide information that a furnisher can use to understand why the furnished information was rejected and, in some instances, may be helpful in identifying problems in data transmission or inaccuracies surrounding the information the furnisher attempted to submit. The Bureau found these reports to be incredibly useful for furnishers to enable them to understand why information was rejected and correct policies to ensure greater accuracy. Unfortunately, the debt collectors could not escape scrutiny without the Bureau mentioning that one or more debt collectors used false, deceptive, or misleading representations when performing collection services of defaulted federal student loans for the Department of Education (DOE). The debt collectors threatened garnishment against certain borrowers who were not eligible for garnishment under the DOE guidelines. Finally, the Bureau still found instances of debt collectors continuing with collection efforts even after receipt of written requests to cease.

Mortgage Origination: The Report noted that several depository institutions failed to establish and maintain written policies and procedures for loan originator activities, which specifically cover prohibited payments, steering, qualification requirements, and identification requirements. For example, one or more institutions failed to include the loan originator's name and Nationwide Multistate Licensing System & Registry identification on loan documents. Additionally, the Report suggests that many institutions still have weak compliance management systems (CMS) to prevent violations of Regulation X (RESPA) & Regulation Z (TILA), by failing to devote enough resources to ensure compliance measures and to take corrective action when needed, although nothing specific was identified.

Remittances: The Bureau amendments to Regulation E (*Remittance Rule; remittance transfers to consumers and other businesses in foreign countries*) became effective on October 28, 2013 and supervision of larger participants for compliance with the Remittance Rule started in December 2014. The Report is the first time the Bureau has highlighted its supervision activities in this area. An overall finding was that many financial institutions had weak CMS by failing to devote adequate resources and by failing to implement their CMS until well after the Remittance Rule became final. This lapse in an effective CMS led one institution to send inaccurate disclosures or no disclosures at all at the time of transfer. Additional violations of the rule include:

- Failing to adhere to the regulatory timeframes (typically 30 minutes) for refunding cancelled transactions;
- Failing to communicate the results of error investigations at all or within the required timeframes, or communicating the results to an unauthorized party instead of the sender; and
- Failing to promptly credit consumers' accounts (for amounts transferred and fees) when errors occurred.

Student Loan Servicing: Continued problems in the student loan servicing area exist and the Report made clear that illegal activity in this market was a top priority for the Bureau. However, the Report did find some servicers improving on their payment allocation processes for overpayment that were more beneficial for borrowers, as well as offering more flexible payment options. The Report did find unfair practices surrounding ambiguous "auto default" clauses where a specific event can trigger a default of the loan and the failure to adequately inform co-signers of this occurrence beforehand. Some examinations revealed a failure to communicate to co-borrowers the ramifications of forbearance, which could prevent them from being released from the loan. Additional examinations found numerous mistakes in balances and interest rates when there is a transfer of ownership for a loan. These same mistakes are being inaccurately reported to the CRAs.

These quarterly reports must be used as guides for any financial services entity when assessing and auditing their current compliance management system. While more good news was reported, it by no means indicates a softening by the Bureau in their expectation on time and resources that must be devoted to ensure all federal and state consumer protection laws are adhered to, as well as to prevent any unfair practice, regardless of whether the CFPB has previously defined that particular practice as unfair. It goes without saying that the CFPB's focus is all about the consumer and all financial services entities must err to the benefit of the consumer at all times and in all instances.

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